

From: Emerson, Langston C
Sent: Wednesday, March 14, 2012 11:35 AM
To: Moser, James T
Cc: Forgione, William J.; Andrew Lowenthal
Subject: TIAA-CREF Follow Up

Jim:

It was a pleasure to meet with you last week to discuss the Volcker Rule. Bill asked that I follow up with you regarding your email to him last week. Below is our response to your inquiry on whether stable value funds should be regulated as swaps. Feel free to contact us with any other questions on this topic.

TIAA-CREF is a member of the Committee of Annuity Insurers (CAI), which submitted a comment letter to the CFTC and SEC on September 26 that is largely representative of our view of the most appropriate manner of regulating stable value contracts (SVC) under Title VII. In short, it is our view that SVCs issued by state-regulated insurance companies are not swaps and, accordingly, should not be included in the definitions of “swap” and “security-based swap” promulgated by the respective Commissions. SVCs issued by state-regulated insurance companies are not considered to be derivative instruments under applicable state insurance law, are subject to a well-established framework of insurance oversight, and are generally understood to be one of several means of guaranteeing income to beneficiaries. While we understand that Congress may have had concerns about non-regulated entities issuing SVCs, we think it is well-established in the marketplace that SVCs issued by state-regulated insurance companies have a separate and unique function apart from swaps and other derivatives and that the opportunity for non-insurance companies to engage in regulatory arbitrage by issuing SVCs is low. However, if as a matter of regulatory certainty the Commissions deem it necessary to include all SVCs within the definition of “swap,” then we join the CAI in strongly urging the Commissions to issue a clear exemption from Federal regulation for SVCs issued by state-regulated insurance companies, which will remain subject to appropriate state-level regulation and oversight.

Regards,

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